

HOUSE BILL No. 1763

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-8-2-53; IC 14-9-8-1; IC 14-21-1; IC 14-22-40-5; IC 23-14-57-4.

Synopsis: Archeology. Defines "artifact" as an object made by a human before December 31, 1870. Requires a person disturbing ground to use reasonable care and diligence to determine if the ground that may be disturbed is within 100 feet of a cemetery or burial ground. Requires a person who disturbs buried human remains or artifacts to cease disturbing the remains or artifacts and the surrounding area within 100 feet; makes it a Class A infraction to fail to do so. Makes reports concerning the location of historical or archeological sites confidential under some circumstances. Allows certain persons to accompany a conservation officer to investigate a violation of historic preservation and archeology law. Establishes a fund to assist private homeowners who accidentally discover an artifact, a burial object, or human remains and need assistance to comply with an approved archeological or development plan. Allows a court to order restitution for certain costs related to the violation of historic preservation and archeology law. Makes it a Class D felony to possess looted property and a Class C felony if the cost of carrying out an archeological investigation on the site that was damaged to obtain the looted property is more than \$100,000. Provides that a disinterment under a plan approved by the department of natural resources is exempt from other disinterment procedures. Makes conforming changes. Makes an appropriation.

Effective: July 1, 2007.

Pierce, Saunders

January 26, 2007, read first time and referred to Committee on Natural Resources.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

HOUSE BILL No. 1763

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-8-2-53 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 53. "Conservation
3 officer" for purposes of IC 14-9-8; has the meaning set forth in
4 IC 14-9-8-1; refers to an officer employee of the law enforcement
5 division organized under IC 14-9-8.

6 SECTION 2. IC 14-21-1-2 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. As used in this
8 chapter, "artifact" means an object made or shaped by human
9 workmanship before December 11, 1816; 31, 1870.

10 SECTION 3. IC 14-21-1-13.5, AS AMENDED BY P.L.1-2005,
11 SECTION 143, IS AMENDED TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2007]: Sec. 13.5. (a) The division may conduct
13 a program to survey and register in a registry of Indiana cemeteries and
14 burial grounds that the division establishes and maintains all
15 cemeteries and burial grounds in each county in Indiana. The division
16 may conduct the program alone or by entering into an agreement with
17 one (1) or more of the following entities:

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- (1) The Indiana Historical Society established under IC 23-6-3.
- (2) A historical society (as defined in IC 36-10-13-3).
- (3) The Historic Landmarks Foundation of Indiana.
- (4) A professional archeologist or historian associated with a college or university.
- (5) A township trustee.
- (6) Any other entity that the division selects.

(b) In conducting a program under subsection (a), the division may receive gifts and grants under terms, obligations, and liabilities that the director considers appropriate. The director shall use a gift or grant received under this subsection:

- (1) to carry out subsection (a); and
- (2) according to the terms of the gift or grant.

(c) At the request of the director, the auditor of state shall establish a trust fund for purposes of holding money received under subsection (b).

(d) The director shall administer a trust fund established by subsection (c). The expenses of administering the trust fund shall be paid from money in the trust fund.

(e) The treasurer of state shall invest the money in the trust fund established by subsection (c) that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The treasurer of state shall deposit in the trust fund the interest that accrues from the investment of the trust fund.

(f) Money in the trust fund at the end of a state fiscal year does not revert to the state general fund.

(g) Nothing in this section may be construed to authorize violation of the confidentiality of information requirements of ~~16 U.S.C. 470(w)~~ **16 U.S.C. 470w-3** and ~~16 U.S.C. 470(h)(1)~~ **16 U.S.C. 470hh**.

(h) The division may record in each county recorder's office the location of each cemetery and burial ground located in that county.

(i) The division shall designate the geographic boundaries for each cemetery and burial ground under subsection (h).

SECTION 4. IC 14-21-1-26.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26.5. (a) Notwithstanding IC 23-14-44-1, this section does not apply to the following:

- (1) A public utility (as defined in IC 8-1-2-1(a)).
- (2) A corporation organized under IC 8-1-13.
- (3) A municipally owned utility (as defined in IC 8-1-2-1(h)).
- (4) A surface coal mining and reclamation operation permitted under IC 14-34.

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Except as provided in this subsection, subsection (b), and subsection (c), a person may not disturb the ground within one hundred (100) feet of a burial ground or cemetery for the purpose of erecting, altering, or repairing any structure without having a development plan approved by the department under section 25 of this chapter or in violation of a development plan approved by the department under section 25 of this chapter. The department must review the development plan not later than sixty (60) days after the development plan is submitted.

(b) A development plan:

(1) must be approved if a person intends to construct a new structure or alter or repair an existing structure that would significantly impact the burial ground or cemetery; and

(2) is not required if a person intends to erect, alter, or repair an existing structure for an incidental or existing use that would not impact the burial ground or cemetery.

(c) A development plan for a governmental entity to disturb ground within one hundred (100) feet of a burial ground or cemetery must be approved as follows:

(1) A development plan of a municipality requires approval of the executive of the municipality and does not require the approval of the department. However, if the burial ground or cemetery is located outside the municipality, approval is also required by the executive of the county where the burial ground or cemetery is located. A county cemetery commission established under IC 23-14-67-2 may advise the executive of the municipality on whether to approve a development plan.

(2) A development plan of a governmental entity other than:

(A) a municipality; or

(B) the state;

requires the approval of the executive of the county where the governmental entity is located and does not require the approval of the department. However, if the governmental entity is located in more than one (1) county, only the approval of the executive of the county where the burial ground or cemetery is located is required. A county cemetery commission established under IC 23-14-67-2 may advise the county executive on whether to approve a development plan.

(3) A development plan of the state requires the approval of the department.

(d) A person disturbing ground shall use reasonable care and diligence to determine if the ground that may be disturbed is within one hundred (100) feet of a burial ground or cemetery. Lack

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1 **of a record under section 13.5 of this chapter does not relieve a**
 2 **person of the duty to use reasonable care and diligence.**

3 ~~(d)~~ (e) A person who recklessly, knowingly, or intentionally violates
 4 this section commits a Class A misdemeanor. However, the offense is
 5 a Class D felony if the person disturbs buried human remains or grave
 6 markers while committing the offense.

7 SECTION 5. IC 14-21-1-27 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 27. (a) A person who
 9 disturbs buried human remains shall do the following:

10 **(1) Immediately cease disturbing the human remains and the**
 11 **area within one hundred (100) feet of the human remains.**

12 ~~(1)~~ (2) Notify the department within two (2) business days of the
 13 time of the disturbance.

14 **(3) Except as provided in subdivision (5), refrain from**
 15 **covering over the human remains.**

16 **(4) Submit a development plan to the department under**
 17 **section 26.5 of this chapter.**

18 ~~(2)~~ (5) Treat or rebury the human remains in a manner and place
 19 according to rules adopted by the commission or a court order and
 20 permit issued by the state department of health under
 21 IC 23-14-57.

22 (b) A person who recklessly, knowingly, or intentionally violates
 23 this section commits a Class A misdemeanor.

24 SECTION 6. IC 14-21-1-29 IS AMENDED TO READ AS
 25 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 29. (a) A person who
 26 discovers an artifact or burial object while disturbing the ground for a
 27 purpose other than the discovery of artifacts or burial objects shall do
 28 the following:

29 **(1) Immediately cease disturbing the ground and the area within**
 30 **one hundred (100) feet of the artifact or burial object.**

31 **(2) Refrain from covering over the artifact or burial object.**

32 ~~(2)~~ (3) Notify the department within two (2) business days after
 33 the time of the disturbance.

34 (b) After notification under subsection (a), the department may do
 35 any of the following:

36 (1) Authorize the person to continue the ground disturbing
 37 activity, with or without conditions.

38 (2) Require that continued ground disturbance activity be
 39 conducted only in accordance with an approved plan. However,
 40 this subdivision does not apply after thirty (30) days from the date
 41 that the department receives notice.

42 **(c) A person who violates subsection (a) commits a Class A**

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1 **infraction.**

2 SECTION 7. IC 14-21-1-32 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
4 1, 2007]: **Sec. 32. (a) Subject to subsections (b) and (c), the division**
5 **may keep reports and information concerning the location of**
6 **historic and archeological sites confidential if the director of the**
7 **division determines that disclosure would likely:**

8 (1) **risk harm to the historic or archeological site;**

9 (2) **cause a significant invasion of privacy; or**

10 (3) **impede the use of a traditional religious site by**
11 **practitioners.**

12 (b) **The division may not disclose reports and information**
13 **required to be confidential under federal law.**

14 (c) **If the director of the division determines that reports and**
15 **information should be confidential under subsection (a), the**
16 **director of the department, in consultation with the director of the**
17 **division, shall determine who may have access to the confidential**
18 **reports and information.**

19 SECTION 8. IC 14-21-1-33 IS ADDED TO THE INDIANA CODE
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
21 1, 2007]: **Sec. 33. An employee of the division or a person**
22 **authorized by the department may accompany a conservation**
23 **officer on public or private property to determine if there is a**
24 **violation of this article.**

25 SECTION 9. IC 14-21-1-34 IS ADDED TO THE INDIANA CODE
26 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
27 1, 2007]: **Sec. 34. (a) The division may conduct a program to assist**
28 **private homeowners who have accidentally discovered an artifact,**
29 **a burial object, or human remains and who need assistance to**
30 **comply with an approved plan to excavate or secure the site from**
31 **further disturbance. The division may conduct the program alone**
32 **or by entering into an agreement with any entity that the division**
33 **selects.**

34 (b) **In conducting a program under subsection (a), the division**
35 **may receive gifts and grants under terms, obligations, and**
36 **liabilities that the director of the division considers appropriate.**
37 **The director shall use a gift or grant received under this**
38 **subsection:**

39 (1) **to carry out subsection (a); and**

40 (2) **according to the terms and obligations of the gift or grant.**

41 (c) **The auditor of state shall establish the archeology**
42 **preservation trust fund for purposes of holding money received**

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under subsection (b).

(d) The director of the division shall administer the archeology preservation trust fund established under subsection (c). The expenses of administering the archeology preservation trust fund shall be paid from money in the trust fund.

(e) The treasurer of state shall invest the money in the archeology preservation trust fund established under subsection (c) that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The treasurer of state shall deposit in the archeology preservation trust fund the interest that accrues from the investment of the trust fund.

(f) Money in the archeology preservation trust fund at the end of a state fiscal year does not revert to the state general fund. There is annually appropriated to the division the money in the archeology preservation trust fund for the division's use in carrying out the purposes of this section.

(g) The division may adopt rules under IC 4-22-2 to govern the administration of this section.

SECTION 10. IC 14-21-1-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 35. (a) In addition to:

(1) a:

(A) sentence imposed under this chapter for a felony or misdemeanor; or

(B) judgment imposed under this chapter for an infraction; and

(2) an order for restitution to a victim;

a court may order an individual to make restitution to the archeology preservation trust fund established under section 34 of this chapter for the division's costs incurred because of the offense committed by the individual.

(b) In ordering restitution under this section, the court shall consider the following:

(1) The schedule of costs submitted to the court by the division.

(2) The cost to the property owner to restore or repair the damaged area of an archeological site or burial ground and place the property in the property's original condition as nearly as practicable.

(3) The amount of restitution that the individual is or will be able to pay.

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(c) The court shall immediately forward to the division a copy of an order for restitution made under this section.

SECTION 11. IC 14-21-1-36 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 36. A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains obtained in violation of this chapter commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least one hundred thousand dollars (\$100,000).**

SECTION 12. IC 14-22-40-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. As used in this chapter, "law enforcement officer" has the meaning set forth in IC 35-41-1-17. The term includes a conservation officer. ~~(as defined in IC 14-9-8-1).~~

SECTION 13. IC 23-14-57-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4. This chapter does not apply to the following:

(1) The disinterment, disinterment, or disinterment of remains upon the written order of the coroner of the county in which the cemetery is situated.

(2) The removal of human remains under a plan approved by the division of historic preservation and archeology under IC 14-21-1.

SECTION 14. IC 14-9-8-1 IS REPEALED [EFFECTIVE JULY 1, 2007].

SECTION 15. [EFFECTIVE JULY 1, 2007] **IC 14-21-1-36, as added by this act, applies only to crimes committed after June 30, 2007.**

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